

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

B.P.J., by her next friend and mother,
HEATHER JACKSON

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, PATRICK MORRISEY in his official capacity as Attorney General, and THE STATE OF WEST VIRGINIA

Defendants,

and

LAINEY ARMISTEAD

Defendant-Intervenor.

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**DEFENDANT-INTERVENOR AND STATE OF WEST VIRGINIA'S
MOTION FOR EXTENSION OF TIME TO RESPOND TO
PLAINTIFF'S MOTION TO RECONSIDER INTERVENTION**

Defendant-Intervenor Lainey Armistead and Defendant State of West Virginia respectfully request an extension of fourteen (14) days to June 23, 2022, in which to respond to Plaintiff's Motion to Reconsider the Grant of Lainey Armistead's Permissive Intervention (ECF No. 353).

1. On December 1, 2021, this Court granted Lainey Armistead's motion to intervene, finding that her motion was timely, her addition would not cause undue delay, she planned to defend H.B. 3293 as a member of the class of people for whom the law was written, and she would add a perspective not represented by any of the current Defendants. Intervention Order 6, ECF No. 130.

2. Ms. Armistead’s unique perspective is particularly important in this case of first impression in this District and this Circuit.

3. More than five months later, on May 26, 2022—after the close of fact and expert discovery, during extensive summary judgment and *Daubert* briefing, and with a trial date quickly approaching—B.P.J. filed a motion asking this Court to reconsider Ms. Armistead’s intervention.

4. Under Local Rule 7.1(a)(7), Ms. Armistead’s response is due on June 9. But the deadline “for serving memoranda may be modified by the judicial officer to whom the motion is addressed.” *Id.*

5. The State of West Virginia (the “State”) expects to respond to the Plaintiff’s motion because the State maintains that the Intervenor’s involvement in the case has been beneficial.

6. Ms. Armistead and the State seek a limited extension of fourteen (14) days to June 23 to respond to this extraordinary motion to exclude Intervenor from this case. Ms. Armistead has not previously requested an extension of time to file a response to any briefing in this matter.

7. This limited extension of time is needed by Ms. Armistead and the State to adequately respond to the arguments in Plaintiff’s motion to revoke Ms. Armistead’s intervention and bar her further participation in the case, including:

- a. that Ms. Armistead no longer shares a “common question of law and fact” with the current action;
- b. that she has prejudiced the Plaintiff by engaging in legitimate discovery; and
- c. that she has made no legal argument that is unique or different from the other Defendants.

8. This extension of time is necessary to fully address a novel question of law rarely considered by the courts. It is further necessary to allow Ms. Armistead’s

counsel to give full attention to the remaining *Daubert* briefing in this case, and to fully address litigation deadlines that are pending in other cases.

9. Granting the extension will not prejudice any party to this litigation or impact any future deadlines. Discovery has concluded, and summary-judgment briefing is complete as of May 26. If, as the Plaintiff argues, Ms. Armistead “has not presented the Court with arguments that ‘differ from those of the current defendants,’” Pl.’s Mem. in Supp. of Mot. to Reconsider 11, ECF No. 354, then her continued participation in any preliminary pre-trial matters will not impede these proceedings.

10. Counsel for all parties have been contacted. B.P.J. alone opposes the extension.

Respectfully submitted this 31st day of May, 2022.

PATRICK MORRISEY
West Virginia Attorney General

/s/ Brandon S. Steele

Brandon Steele, WV Bar No. 12423
Joshua D. Brown, WV Bar No. 12652
The Law Offices of Brandon S. Steele
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
(304) 253-1230
(304) 255-1520 Fax
bsteelelawoffice@gmail.com
joshua_brown05@hotmail.com

Jonathan Scruggs, AZ Bar No.
030505*
Roger G. Brooks, NC Bar No. 16317*
Henry W. Frampton, IV, SC Bar No.
75314*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
(480) 444-0028 Fax
jscruggs@adflegal.org
rbrooks@adflegal.org
hframpton@adflegal.org

Christiana Holcomb, DC Bar No.
176922*
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001
(202) 393-8690
(202) 347-3622 Fax
cholcomb@adflegal.org

/s/ Curtis R. A. Capehart

Douglas P. Buffington II (WV Bar # 8157)
Chief Deputy Attorney General
Curtis R.A. Capehart (WV Bar # 9876)
Deputy Attorney General
David C. Tryon (WV Bar #14145)
Deputy Solicitor General
OFFICE OF THE WEST VIRGINIA ATTORNEY
GENERAL
State Capitol Complex
1900 Kanawha Blvd. E, Building 1, Room
E-26
Charleston, WV 25305-0220
Telephone: (304) 558-2021
Facsimile: (304) 558-0140
Email: David.C.Tryon@wvago.gov

*Counsel for Defendant, STATE OF WEST
VIRGINIA*

(signatures continued on next page)

Tyson C. Langhofer, VA Bar No.
95204*

Rachel A. Csutoros, MA Bar No.
706225*

Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, VA 20176
(571) 707-2119
(571) 707-4790 Fax
tlanghofer@adflegal.org
rcsutoros@adflegal.org

Travis C. Barham, GA Bar No.
753251*

Alliance Defending Freedom
1000 Hurricane Shoals Road NE, Ste
D-1100
Lawrenceville, GA 30043
(770) 339-0774
(770) 339-0774 Fax
tbarham@adflegal.org

Timothy D. Ducar, AZ Bar No.
015307*

Law Offices of Timothy D. Ducar, PLC
7430 E. Butherus Drive, Suite E
Scottsdale, AZ 85260
(480) 502-2119
(480) 452-0900 Fax
tducar@azlawyers.com

**Visiting Attorneys
Attorneys for Defendant-Intervenor*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

B.P.J., by her next friend and mother,
HEATHER JACKSON

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, PATRICK MORRISEY in his official capacity as Attorney General, and THE STATE OF WEST VIRGINIA

Defendants,

and

LAINEY ARMISTEAD

Defendant-Intervenor.

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin

CERTIFICATE OF SERVICE

I, Brandon Steele, hereby certify that on May 31, 2022, I electronically filed a true and exact copy of ***Defendant-Intervenor and State of West Virginia's Motion for Extension of Time to Respond to Plaintiff's Motion to Reconsider Intervention*** with the Clerk of Court and all parties using the CM/ECF system.

/s/ Brandon S. Steele

Brandon Steele, WV Bar No. 12423
The Law Offices of Brandon S. Steele
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
(304) 253-1230
(304) 255-1520 Fax
bsteelelawoffice@gmail.com

Attorney for Defendant-Intervenor